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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition for Rulemaking of the	)	
Telecommunications Resellers Association	)	
To Eliminate Comity-Based Enforcement of	)	RM-9249
Other Nations' Prohibitions Against the	)	
Uncompleted Call Signalling Configuration	)	
Of International Call-back Service	)	

COMMENTS OF THE COSTA RICAN INSTITUTE OF ELECTRICITY

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May 1, 1998

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SUMMARY

The Telecommunications Resellers Association ("TRA") has fundamentally mischaracterized the issue before the Commission. In its petition, TRA repeatedly asserts that the Commission should no longer "enforce the laws of other nations prohibiting the provision of international call-back." The Commission, however, has never sought to enforce the laws of other countries. Rather, the agency has determined that it is in the United States' interest to require that all U.S. carriers use the agency's authorization to provide service in a lawful manner. The Commission has further decided to take carefully circumscribed actions to see that U.S. carriers comply with this obligation.

The Commission should not be misled by TRA's assertion that the agency's current call-back regime "does violence to the Commission's pro-competitive international policies." Foreign governments and carriers have made limited use of the procedures established by the Commission. To date, some 33 countries, including Costa Rica, have informed the Commission that call-back using the uncompleted call-signalling method is illegal in their country. In addition, one government (Saudi Arabia) requested that the Commission bar U.S. carriers from providing call-back in its country. Finally, one foreign carrier (the Philippines Long Distance Company) filed a series of complaints, pursuant to Section 208, which the Common Carrier Bureau granted. This record hardly suggests that the Commission has transformed itself into an apparatus for the enforcement of foreign law.

There is no merit to TRA's assertion that the Commission should alter its established policy because, in the years since the *Call-Back Reconsideration Order* was adopted, the United States has signed the World Trade Organization Telecommunications Agreement. The adoption of the WTO Agreement has not changed the *justification* for the Commission's

call-back policy. As noted above, the Commission's established call-back policy reflects the agency's interest in preventing its licensees from using agency authorizations to engage in illegal conduct. Nor has the adoption of the WTO agreement altered the *need* for the Commission to assist foreign governments. Call-back operators continue to be physically present in the United States. They continue to completely lack any facilities, employees, or financial assets in the countries in which they provide service. As a result, it often is not possible for the governments in these countries to enforce laws restricting or prohibiting call-back.

While TRA has provided no justification for the Commission to alter its existing policy, the U.S. resellers have failed to acknowledge the adverse legal and policy consequences of doing so. As an initial matter, eliminating the right of foreign governments and carriers to seek Commission assistance would violate Section 208 of the Communications Act. Foreign governments and foreign carriers — like any other entities — may file a complaint pursuant to Section 208. In *AT&T v. FCC,* the D.C. Circuit held that the Commission does not have discretion to decline to adjudicate a Section 208 complaint. Consequently, even if the Commission were to eliminate the two-step enforcement procedure established in the *Call-back Reconsideration Order*, it may not prevent foreign governments and carriers from bringing complaints, under Section 208, alleging that the U.S. reseller had violated its FCC authorization by providing call-back in a country in which it is illegal.

The only way in which the Commission could foreclose foreign governments and carriers from bringing enforcement actions under Section 208 would be to eliminate the restriction in U.S. carriers' Section 214 authorizations barring them from providing call-back to countries that have declared this offering to be illegal. This action, however, would be inconsistent with the ITU's Kyoto Declaration, which requires ITU Member Countries —

including the United States — to take "appropriate action within the constraints of its national law" to prevent a carrier subject to its jurisdiction from "infring[ing] the national law of a Member State."

Finally, the Commission cannot consider its call-back policy in isolation. The Commission currently is engaged in an aggressive campaign to pressure foreign carriers throughout the world to reduce accounting rates to agency-specified levels. The only way in which accounting rates can be reduced is through bilateral agreement with U.S. carriers and their foreign correspondents. The willingness of foreign carriers to work cooperatively to achieve further reductions in accounting rates clearly will be affected by the actions that the Commission takes in this proceeding. If the Commission expects foreign carriers to assist it in achieving its goals of lower accounting rates, it must make reasonable efforts to accommodate the laws and policies of other countries.

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COMMENTS OF THE COSTA RICAN INSTITUTE OF ELECTRICITY

The Costa Rican Institute of Electricity ("ICE") files these comments in opposition to the petition of the Telecommunications Resellers Association ("TRA"). In its petition, TRA asks the Commission to allow U.S. carriers to use their Section 214 authorization to provide call-back services in countries in which this offering is illegal.[1]

INTRODUCTION AND STATEMENT OF INTEREST

ICE provides domestic and international telecommunications service in Costa Rica. In recent years, ICE has made significant investments in the infrastructure. As a result, Costa Rica has one of the most modern and efficient telecommunications networks in Latin America. Indeed, approximately 94 percent of the population now has access to either a private or a pay telephone. While ICE currently is a state-owned entity that has the exclusive right to

[1] Petition for Rulemaking of the Telecommunications Resellers Association, RM-9249 (filed Mar. 19, 1998) ("TRA Petition").

provide telecommunications service, the Government of Costa Rica is committed to liberalizing the telecommunications sector.

As the Commission has recognized,[2] Costa Rica has expressly declared call-back to be illegal.[3] Despite the adoption of a law prohibiting the provision of call-back using the code-calling method, U.S.-based operators have continued to provide service in Costa Rica. While it is not possible to determine the level of traffic, ICE estimates that at least five percent of all outbound international service is now provided by illegal call-back operators. The actual number could be substantially higher.

The Government of Costa Rica has not been able to effectively enforce its law barring call-back. At the present time, the new Costa Rican regulatory authority (ARESEP) is considering a complaint, brought by ICE, against a U.S.-based, FCC-authorized call-back operator. The call-back operator has taken the position that, because its assets and facilities are located in the United States, it is not subject to restrictions imposed under Costa Rican law. While no decision has been made, at some point either the Government of Costa Rica or ICE may request the assistance of the Commission.

In light of the above, ICE strongly opposes the proposal that the U.S. resellers have advanced. If adopted, the TRA proposal would eliminate the Commission's requirement

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[2] See *Via USA, Ltd. et al.*, Order on Reconsideration, 10 FCC Rcd 9540, 9554 & nn.63-64 (1995) ("*Call-back Reconsideration Order*").

[3] *See* Servicio Nacional de Electricidad Regulation, 1994 Ch. VIII, Art. 27(e) ("The user or subscriber of [the national telephone service] is forbidden from . . . [u]sing international telecommunications services for the provision of telecommunications . . . by means of the use of automatic answering or calling (unauthorized by ICE), or any other method of hotline, physical line, virtual line, or wrongful use of the telecommunications infrastructure of ICE."); Servicio Nacional de Electricidad Resolution No. 2962-96 (specifically declaring that call-back violates constitutional and regulatory provisions) (a copy of this resolution is attached); *see also* Letter from Hon. Sonia Picado, Ambassador of Costa Rica, to Hon. Vonya McCann, U.S. Department of State (Aug. 28, 1996) (officially notifying the U.S. Government that call-back is illegal in Costa Rica).

that U.S. carriers operate in a manner that is consistent with the laws of the jurisdictions in which they provide service, and would bar foreign governments and carriers from seeking FCC assistance in preventing a U.S. carrier from acting illegally.

As demonstrated below, the Commission has taken limited actions to prevent U.S. carriers from using the agency's authorization to engage in unlawful activities. The Commission has recognized that such an approach is in the United States' interest. Contrary to TRA's assertion, the adoption of the WTO agreement provides no basis for the Commission to alter its existing policy. Indeed, doing so would have significant adverse effects. In particular, this would: (1) violate Section 208 of the Communications Act; (2) be inconsistent with the International Telecommunication Union's Kyoto Declaration; and (3) impede the Commission's effort to reduce international accounting rates. For all of these reasons, the Commission should deny TRA's petition.

I. TRA HAS PROVIDED NO JUSTIFICATION FOR THE COMMISSION TO REVERSE ITS ESTABLISHED CALL-BACK POLICY

A. THE COMMISSION IS NOT "ENFORCING FOREIGN LAW"; IT HAS TAKEN VERY LIMITED ACTION THAT IS IN THE UNITED STATES' INTEREST

TRA has fundamentally mischaracterized the issue before the Commission. In its petition, TRA repeatedly asserts that the Commission should no longer "enforce the laws of other nations prohibiting . . . the provision of international call-back."[4] The Commission, however, has *never* sought to enforce the laws of other countries. Rather, the agency has determined – as a matter of U.S. law — that it is in the public interest to require that all U.S. carriers use the agency's authorization to provide service in a lawful manner. The Commission

[4] TRA Petition at 2.

has further decided to take carefully circumscribed actions to see that U.S. carriers comply with this obligation.

Contrary to TRA's assertion, the Commission has not acceded to the demands of "a handful of foreign governments."[5] In the *Call-back Order*, the agency held that call-back is legal under U.S. and international law, but required U.S. carriers to "provide service in a manner that is consistent with the laws of the countries in which they operate."[6] A significant number of parties — including AT&T, foreign carriers, and foreign governments — sought reconsideration of this decision. In their petitions, these parties argued that the Commission's decision to authorize call-back service violated both international law and U.S. law, as well as principles of international comity. They therefore called on the Commission to *prohibit* U.S. carriers from providing call-back.[7] The Commission, of course, declined to do so.

Indeed, the Commission's actions were even more limited than those proposed by the U.S. State Department. In response to the Commission's request for an advisory opinion regarding the petitions for reconsideration of the *Call-back Order*, the Department recommended that the Commission require applicants seeking Section 214 authorizations to provide "confirmation that, with respect to the countries in which the call-back providers expect to offer call-back service, the call-back providers . . . had exercised reasonable care in determining that there were no express prohibitions on the call-back configuration (including, *e.g.,* prohibiting customers from utilizing callback services or prohibiting operators from participating in

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[5] TRA Petition at 2.

[6] *Via USA, Ltd. et al.*, Order, Authorization and Certificate, 9 FCC Rcd 2288, 2292 (1994) ("*Call-back Order*").

[7] See Petition for Reconsideration of AT&T Corp., *Via USA, LTD et al.*, File Nos. ITC-93-031, ITC-93-050, at 15-16 (filed Jun. 10, 1994); Comments of COMTELCA and INTEL In Support of the Petition for Reconsideration of AT&T Corp., File Nos. ITC-93-031, ITC-93-050, at 34-35 (filed Jul. 22, 1994).

configurations which result in call-back telephony)."[8] Rather than adopting the procedure proposed by the Department of State, the Commission, in the *Call-Back Reconsideration Order,* simply "reiterate[d] the requirement articulated in [the] *Call-Back Order* that applicants may not provide call-back using uncompleted call signalling to countries which have clearly and explicitly prohibited this offering by statute or regulatory decision."[9]

The only additional action taken by the Commission was to establish a two-part procedure to assist foreign governments in preventing the provision of unlawful service in their country. Under the Commission's procedure, "any foreign government . . . may convey to the Commission's staff documentation of its specific statutory or regulatory measure [barring call-back] in order to put U.S. carriers on notice that international call-back utilizing uncompleted call signalling is illegal in its territory."[10] In addition, "[a]ny foreign government which has expressly found international call-back utilizing uncompleted call signalling to be unlawful, and which has been unable to enforce its domestic law or regulation against U.S. providers of this offering, may so notify the United States government."[11] The Commission has stressed that "foreign governments which have decided to outlaw uncompleted call signalling bear the principal responsibility for enforcing their domestic laws."[12]

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[8] Letter from Ambassador Vonya B. McCann, United States Coordinator, International Communications and Information Policy, to Hon. Reed Hundt, Chairman, Federal Communications Commission, at 5 (Mar. 22, 1995) ("State Department Letter").

[9] *Call-back Reconsideration Order,* 10 FCC Rcd at 9557; *see also id.* at 9555 ("We reaffirm our previous finding that call-back providers utilizing the uncompleted call signalling configuration must provide this offering in a manner consistent with the laws of the countries in which they operate.").

[10] *Id.* at 9558.

[11] *Id.*

[12] *Id.* at 9557.

The Commission has made clear that prohibiting U.S. carriers from violating foreign law is in the interests of the United States. As the Commission stated:

> [S]ome foreign governments regard international call-back service as contrary to their national laws, and they view activities taking place within the United States . . . as contributing to the evasion of their laws. . . . [W]e recognize that foreign governments face unusual difficulties in giving effect to their laws and regulations barring uncompleted call signalling. Our invocation of comity in this circumstance would assist the effective enforcement of such foreign laws and regulations. . . . *We would expect no less from foreign governments in a comparable context.*[13]

As the Commission recognized, the operation of the international telecommunications system increasingly requires cooperation among nations. The United States — as a major participant in the world of telecommunications market — is one of the major beneficiaries of such international cooperation. The United States cannot expect to receive the benefits of international cooperation unless it cooperates with other countries — even when it does not fully agree with their policies. Consequently, by requiring U.S. carrier to operate in a lawful manner, and by agreeing to assist other countries seeking to prevent illegal conduct by U.S. carriers, the Commission plainly has advanced the long-term interests of the United States.

There is nothing remarkable about the Commission's decision to require U.S. carriers that provide call-back service in other countries to operate in a lawful manner. The obligation to use a license granted by the Commission in a lawful manner is implicit in every

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[13] *Id.* (emphasis added). The Commission has recognized that its approach is consistent with that taken by the U.S. Department of Justice., which specifically considers the ability of foreign countries to use their law to prevent anti-competitive conduct within their territory. *See id.* at 9557 n.81 (*citing* U.S. Department of Justice, Antitrust Division, Antitrust Guidelines for International Operations, at 21 (Apr. 1995)).

agency authorization.[14] Indeed, in many cases, the Commission requires U.S. licensees to obtain foreign government approval before providing service in other countries.[15]

Notwithstanding the above, TRA asserts that the Commission's "accommodation" of other countries' laws "does violence to the Commission's pro-competitive global policies,"[16] and has made the agency an "unintended accomplice of those who seek to thwart its competitive policies."[17] The Commission should not be mislead by this hyperbole. Foreign governments and carriers have made sparing use of the procedures established by the Commission. To date, some 33 countries – including Costa Rica -- have informed the Commission that call-back using the uncompleted call-signalling method is illegal in their country. In addition, one government (Saudi Arabia) requested that the Commission bar U.S. carriers from providing call-back in its

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[14] The Commission routinely will deny or revoke licenses if it believes that the applicant has used its government-granted authorization to engage in illegal conduct. For example, Section 309 of the Communications Act states that the Commission may grant a broadcast license application only if the grant would be in the "public interest, convenience, and necessity." 47 U.S.C. § 309(a). Section 308 of the Act states that, in considering an application, the Commission may consider the "character . . . of the applicant." 47 U.S.C. § 308(b). The Commission has stated that its evaluation of character is "focused on specific traits which are predictive of an applicant's propensity to . . . comply with the Communications Act or the Commission's rules or policies." *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 F.C.C.2d 1179, 1189 (1986).

[15] *See, e.g., Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems and DBSC Petition for Declaratory Rulemaking Regarding the Use of Transponders to Provide International DBS Service,* 11 FCC Rcd 2429, 2440 n.87 (1996) ("[W]e expect U.S. operators to submit to applicable national processes wherever they attempt to use DBS frequencies on a for-profit basis."); *Amendment of the Commission's Rules to Establish Policies and Rules Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands*, 9 FCC Rcd 5936, 6009 (1994) ("[S]ervice provision [by "Big LEOs"] in foreign countries will be subject to a particular country's authorization."); *Application of EarthWatch Incorporated for Modification of its Authorization to Construct, Launch and Operate, Remote Sensing Satellite System,* File No. 137-SAT-ML-96, 12 FCC Rcd 21637, 21643 (1997) ("[T]he Commission will retain jurisdiction to require United States licensees to meet . . . any national requirements imposed by other licensing administrations. Authorizations and approvals required for implementation of a transmission link between an earth station and the EarthWatch space segment will remain solely within the host country's jurisdiction.")

[16] TRA Petition at 10.

[17] *Id.* at 16.

country.[18] Finally, one foreign carrier (the Philippines Long Distance Company) filed a series of complaints, pursuant to Section 208, which the Common Carrier Bureau granted.[19] This record hardly suggests that the Commission has transformed itself into an apparatus for the enforcement of foreign law.

B. THE ADOPTION OF THE WTO AGREEMENT DOES NOT PROVIDE A BASIS FOR THE COMMISSION TO ALTER ITS EXISTING POLICY

TRA argues that the Commission should alter its established policy because, in the years since the *Call-Back Reconsideration Order* was adopted, the United States has signed the World Trade Organization Telecommunications Agreement, which allows "foreign carriers . . . [to] freely enter, and compete with U.S. carriers in, the U.S. telecommunications market.[20] As a result, TRA contends, "there can no longer be any policy justification for Commission recognition or enforcement of foreign laws . . . intended to restrain U.S. carriers from enter[ing their] telecommunications markets either in countries which have not committed to allow competitive entry or which have committed to open their markets, but have failed to do so."[21]

TRA's argument is without merit. The adoption of the WTO Agreement has not changed the *justification* for the Commission's call-back policy. As noted above, the Commission's established call-back policy reflects the agency's interest in preventing its

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[18] *See* Letter from Saad S. Al-Qousi, Director of International Telecon Saudi PTT, to the Diane Cornell, Chief, Telecommunications Division, International Bureau, FCC (Oct. 28, 1996).

[19] *See, e.g., Philippine Long Distance Telephone Co. v. USA Link, L.P. d/b/a USA Global Link*, 12 FCC Rcd 12010 (1997); *Philippine Long Distance Telephone Co. v. Dialback USA, Inc.*, 12 FCC Rcd 12023 (1997); *Philippine Long Distance Telephone Co. v. International Telecom, Ltd. d/b/a Kallback Direct*, 12 FCC Rcd 15001 (1997).

[20] TRA Petition at 3.

[21] *Id.*

licensees from using agency authorizations to engage in illegal conduct in foreign countries. Nor has the adoption of the WTO agreement altered the *need* for the Commission to assist foreign governments. Call-back operators continue to be physically present in the United States. They continue to have no facilities, employees, or financial assets in the countries in which they provide service. As a result, it often is not possible for the governments in these countries to enforce their laws regarding call-back. Rather, only the Commission can effectively stop unlawful conduct by U.S. carriers by making clear that U.S. carriers may not use their Section 214 authorizations to violate foreign laws.

Contrary to TRA's suggestion, the Commission's current policy does not create an "asymmetry of competitive opportunities" that "[place] U.S. carriers at a distinct disadvantage" by allowing carriers from non-WTO to enter the U.S. market, while U.S. carriers are barred from using call-back to enter the foreign carrier's home market.[22] The United States has *not* opened its market to all foreign carriers. Rather, the U.S. market is presumptively open only to those carriers from the 68 other countries that have signed the WTO Telecommunications Annex. Carriers from non-WTO countries, such as Costa Rica, can only enter the U.S. market if they satisfy the exacting standards of the Commission's Equivalent Competitive Opportunities ("ECO") test.[23] The Commission decision to respect legal restrictions on call-back in non-WTO countries, therefore, does not put U.S. carriers at a competitive disadvantage.

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[22] *Id.* at 15.

[23] *See Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23944-46 (1997) *("Foreign Participation Order")*. Even for carriers from WTO countries, the Commission has taken the position that it retains the right to make a case-by-case evaluation as to whether – and, if so, on what terms – to allow the carrier to enter the U.S. market. *See id.* at 23910-21.

Nor would it be appropriate for the Commission to authorize the provision of call-back, where this service violates national law, in countries "which have committed to open their markets, but have failed to do so."[24] As an initial matter, it is by no means clear that the prohibition of call-back violates the WTO. As the Commission has recognized, consistent with the WTO, a country may limit market entry to prevent competitive distortion.[25] A good argument can be made that the entry of call-back operators — which use network resources and make no contribution to the development of the infrastructure — distorts the operation of emerging competitive markets.

Even if prohibiting of call-back does violate the WTO, the Commission should not adopt TRA's proposals. In effect, TRA asks the Commission to engage in a form of retaliatory "self-help." Under this approach, if a WTO signatory does not remove barriers to entry into its market through the provision of call-back, the Commission would authorize U.S. carriers to violate the foreign country's law. This approach is flatly inconsistent with the WTO Agreement. Under the WTO Agreement, disputes regarding a country's alleged non-compliance with its market-opening obligation are to be resolved through negotiation and, if necessary, arbitration.[26] Unilateral "self-help" actions are clearly not permitted.

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[24] TRA petition at 4.

[25] *Foreign Participation Order*, 12 FCC Rcd at 23914. Indeed, the United States proposes to significantly limit entry by carriers from foreign countries that have a chosen not to accede to the Commission's demand to immediately lower their accounting rates to FCC-specified levels.

[26] *See* Understanding on Rules and Procedures Governing the Settlement of Disputes, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, Legal Instruments — Results of the Uruguay Round vol. 1, 33 I.L.M. 1226 (1994).

II. ELIMINATING THE PROHIBITION AGAINST U.S. CARRIERS USING THEIR SECTION 214 AUTHORIZATION TO PROVIDE UNLAWFUL SERVICES WOULD HAVE ADVERSE LEGAL AND POLICY CONSEQUENCES

While TRA has failed to advance an adequate justification for its proposal, it has ignored the adverse legal and policy consequences that would result if the Commission were to eliminate its current call-back policy.

As an initial matter, the Commission should reject TRA's proposal to prevent foreign government and carriers from seeking agency assistance because it is inconsistent with Section 208 of the Communications Act. The Commission has recognized that there are two means by which foreign governments or carriers can request assistance in preventing illegal conduct by U.S. carriers. The first method is to use the two-step procedure adopted in the *Call-back Reconsideration Order.* The second method is for the foreign government or carrier — like any other party — to file a complaint pursuant to Section 208 of the Communications Act.[27] As the Commission has explained:

> Although we have provided certain procedures that may be followed by foreign governments experiencing difficulty in enforcing their national laws and regulations against U.S. providers of international call-back using uncompleted call signalling . . . [these procedures] in no way preclude a party from filing a formal complaint pursuant to Section 208 of the [Communications] Act against a carrier for a violation of the Act, the Commission's rules, or any Commission order.[28]

In *AT&T v. FCC,* the D.C. Circuit held that the Commission does not have discretion to decline to adjudicate a Section 208 complaint. Rather, the court made clear, "when presented with [a] complaint, the Commission [has] an obligation to answer the questions it

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[27] 47 U.S.C. § 208.

[28] *Philippine Long Distance Telephone Co. v. International Telecom, Ltd. d/b/a Kallback Direct*, 12 FCC Rcd 15001, 15012 (1997).

raise[s] . . . ."[29] The subsequent adoption of the Telecommunications Act of 1996 does not alter this conclusion. To the contrary, the 1996 Act decreased the period of time that the FCC has to resolve complaints. Consequently, even if the Commission were to eliminate the two-step procedure established in the *Call-back Reconsideration Order*, it cannot prohibit foreign governments and carriers from bringing complaints under Section 208.

The only way in which the FCC could foreclose foreign governments and carriers from bringing enforcement actions under Section 208 would be to eliminate the restriction, in U.S. carriers' Section 214 authorizations, barring them from providing call-back to countries that have declared this offering to be illegal. To do so, the Commission would have to conclude that it is a utterly indifferent to the fact that U.S. carriers are using the agency's 214 authorization to violate the laws of the jurisdictions in which they provide service. This approach, however, would be flatly inconsistent with the views expressed by the Department of State and the International Telecommunication Union ("ITU").

The Department of State has stressed the importance of seeking to accommodate the concerns of other countries. Indeed, in its 1995 advisory opinion, the Department specifically recommended that the FCC "consider the concerns expressed by a number of other countries . . . at the ITU Plenipotentiary Conference (Kyoto, 1994), at the ITU International Telecommunications Development Conference (Buevos Aires, 1994), and elsewhere."[30]

TRA is simply wrong to suggest that eliminating the current regime would be consistent with the ITU's Kyoto Declaration.[31] As TRA concedes, the Kyoto Declaration

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[29] *American Tel. & Tel. Co. v. FCC*, 978 F.2d 727, 732 (D.C. Cir. 1992).

[30] State Department Letter at 5.

[31] *See* TRA Petition at 10.

requires ITU Member Countries — including the United States — to take "appropriate action within the constraints of its national law" to prevent a carrier subject to its jurisdiction from "infring[ing] the national law of a Member State."[32] The Declaration, moreover, goes on to urge ITU Members to "ensure that national laws and regulations of member countries are respected."[33] Consistent with these provisions, the absolute minimum that the FCC can do is to require U.S. carriers to comply with the applicable national law.

Finally, the Commission cannot consider its call-back policy in isolation. The Commission currently is engaged in an aggressive campaign to pressure foreign carriers throughout the world to reduce accounting rates to agency-specified levels.[34] ICE rejects any effort by the Commission to unilaterally impose accounting rates on carriers outside of the United States. At the same time, however, ICE agrees that accounting rates should continue to move towards cost. Elimination of the Commission's current call-back policy would impede that process.

Allowing U.S. carriers to provide call-back in countries that have declared it to be illegal would deprive incumbent carriers in those countries of anticipated collection revenues from their domestic customers. At the same time, the growth of call-back would increase the amount that these operators receive from U.S. facilities-based carriers in settlements payments. As the proportion of a carrier's revenue that comes from settlements payments increases, the ability and incentive of that carrier to reduce accounting rates plainly decreases.

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[32] *Id.*; *see also* Final Acts of the Plenipotentiary Conference (PP-94), Res. COM4/6 (Kyoto 1994) at ¶ 2 ("Kyoto Declaration").

[33] Kyoto Declaration at ¶ 3.

[34] *See International Settlement Rates*, Report and Order, 12 FCC Rcd 19806 (1997).

Ultimately, the only way in which accounting rates can be reduced is through bilateral agreement with U.S. carriers and their foreign correspondents. The willingness of foreign carriers to work cooperatively to achieve further reductions in accounting rates clearly will be affected by the actions that the Commission takes in this proceeding. If the Commission expects foreign governments and carriers to assist it in achieving its goals of lower accounting rates, it must make reasonable efforts to accommodate the laws and policies of other countries.

CONCLUSION

TRA has provided no justification for the Commission to deviate from the well-considered conclusions it reached in the *Call-back Reconsideration Order*. To the contrary, doing so would have adverse services legal and policies consequences. The Commission, therefore, should deny TRA's petition.

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May 1, 1998

CERTIFICATE OF SERVICE

I, Patrick G. Liles, do hereby certify that on this 1st day of May, 1998, I have caused a copy of the foregoing "Comments of the Costa Rican Institute of Electricity" to be served by first class mail, postage prepaid, on the persons listed below.

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ORGANISMO REGULADOR
COSTA RICA

SERVICIO NACIONAL DE ELECTRICIDAD
ORGANISMO REGULADOR DE LOS SERVICIOS PUBLICOS DE COSTA RICA

Visto el Oficio SP 8410/SOT 1345-95, recibido por este Organismo Regulador el 9 de noviembre de 1995, suscrito por el Ing. Oscar E. Rodríguez Castro, Subgerente de Operaciones de Telecomunicaciones del Instituto Costarricense de Electricidad (ICE), en que se solicita que este Servicio emita una declaración respecto de la ilegalidad del "Call Back" (reventa de servicios de telecomunicaciones), para ser presentada al Departamento de Estado de los Estados Unidos de América.

Visto el Oficio 1321-DT-96, del 23 de mayo de 1996, suscrito por la Oficina de Control Telefónico del Departamento Técnico de este Organismo Regulador, con fundamento en el artículo 121, inciso 14, aparte c) de la Constitución Política de la República de Costa Rica, sancionada el 7 de noviembre de 1949, en el artículo 5 de la Ley 7333 (Ley Orgánica del Poder Judicial) y sus reformas, vigente desde el 1 de enero de 1994; y, en el artículo 27 del Reglamento para Servicios de Telecomunicaciones Internacionales, vigente desde el 2 de mayo de 1994.

DECLARA

Que el "Call Back" o reventa de servicios de telecomunicaciones, es prohibida en Costa Rica, conforme a las disposiciones constitucionales y reglamentarias citadas antes y las sentencias de la Sala Constitucional de la Corte Suprema de Justicia de la República de Costa Rica.

Junta Directiva del Servicio Nacional de Electricidad, San José, a las diez horas del veintisiete de agosto de mil novecientos noventa y seis. (Artículo II inciso 2) Sesión Ordinaria número 2962-96 de 27 de agosto de 1996)

ICE
PRESIDENCIA EJECUTIVA
11 SEP 1996
RECIBIDO

Servicio Nacional de Electricidad
JUNTA DIRECTIVA
Secretaría

S N E
ORGANISMO REGULADOR DE LOS SERVICIOS PUBLICOS Y ADMINISTRADOR DE LAS AGUAS NACIONALES

SERVICIO NACIONAL DE ELECTRICIDAD
ORGANISMO REGULADOR
COSTA RICA

Lic. Leonel Fonseca Cubillo
PRESIDENTE
JUNTA DIRECTIVA

Ms. Walther Herrera Cantillo
SUBDIRECTOR-JEFE
DEPARTAMENTO TECNICO

Lic. José Enrique Umaña Chaverría
SUBDIRECTOR-JEFE
DEPARTAMENTO DE ESTUDIOS
ECONOMICO-FINANCIEROS

Lic. Guido Granados Ramírez
DIRECTOR-VOCAL
JUNTA DIRECTIVA

Ing. José Alfredo Sánchez Zumbado
DIRECTOR-VOCAL
JUNTA DIRECTIVA

Daisy Lépiz Guzmán
SECRETARIA
JUNTA DIRECTIVA

NOTIFIQUESE AL INSTITUTO COSTARRICENSE DE ELECTRICIDAD.-A LAS _____ HORAS _____ DEL _____ SETIEMBRE DE 1996.

JUNTA DIRECTIVA